



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2405 OF 2024

Gangaram Bhujanga

.. Petitioner

versus

The State of Maharashtra & others

.. Respondents

Mr. V. B. Deshpande, Advocate holding for Mr. S. S. Pidgewar,
Advocate for the Petitioner.

Mr. A. B. Girase, GP for the State.

**CORAM : RAVINDRA V. GHUGE AND
R. M. JOSHI, JJ.**

DATE : 4th MARCH, 2024.

ORDER : (Per R. M. Joshi, J.)

1. The Petitioner is seeking appropriate directions to the Respondents to pass an award under Section 28A of the Land Acquisition Act (hereinafter referred to as 'the Act' for short) in respect of Gat No. 149 admeasuring 33 R situated at village Karla (Bk), Biloli, Dist. Nanded.

2. It is the case of the Petitioner that his land was acquired along with other lands and the award was passed by the Special Land Acquisition Officer. Some of the villagers filed reference under

Section 18 of the Act seeking enhancement of the compensation. In LAR No. 69/2011, by judgment and award dated 15th April, 2017, compensation granted by the Special Land Acquisition Officer was enhanced. The Claimants therein being not satisfied, preferred First Appeal Nos. 1560/2018 and 1561/2018 before this Court. This Court, by passing judgment dated 21st September, 2019, allowed the Appeals and remanded the matter back for decision afresh. Thereafter LAR No. 69/2011 was decided afresh on 30th September, 2019 with further enhancement of compensation. The Petitioner filed Application before the Deputy Collector (Land Acquisition) Biloli/Nanded bearing No. Spl. LAO/UPP-1/CR/208/2008 on 15th June, 2017 under Section 28A of the Act for re-determination, fixation and enhancement of compensation. As far as the judgment and award passed by the Reference Court dated 30th September, 2019 in LAR No. 69/2011 is concerned, the Acquiring Body being aggrieved by the said award filed Appeal bearing First Appeal St. No. 15504/2020 before this Court which is pending decision. In these facts of the case, a direction is sought to the Collector to pass an award under Section 28A of the Act.

3. The learned Advocate for the Petitioner submits that in First Appeal St. No. 15504/2020, this Court had granted stay to the said award initially and subsequently, the order of stay has been vacated. It is, thus, his contention that there is no stay to the award passed by the Reference Court and hence, there is no impediment in passing award under Section 28A of the Act on the Application filed by the Petitioner. It is his further submission that the Collector has erroneously postponed the hearing of the said Application *sine die* till the decision of the First Appeal.

4. The learned AGP opposed the said contentions by referring to the provisions of Section 28A of the Act and the binding precedents in following judgments :-

- i) Bharatsingh Gulabsingh Jakhad and others vs. State of Maharashtra and others
AIR 2018 SC (Civil) 940
- ii) Babu Ram and others vs. State of U.P. and another,
1995 AIR SCW 65.

5. The facts projected by the Petitioner indicate that the land of the Petitioner was acquired under the same acquisition proceedings in respect of which the award has been passed by the

Special Land Acquisition Officer and one of such aggrieved land loser had filed Reference under Section 18 of the Act for enhancement of compensation and enhancement has been granted by the Reference Court. In such circumstances, Application under Section 28A came to be filed. The said provision contemplates providing substantive right to interested owner who receives compensation under Section 18 of the Act without protest for higher compensation, and remedy is provided to him to make a written application within the prescribed period for enhancement at par to the compensation granted to the other aggrieved land owners.

6. The said provision is based upon the principle that once there is determination of compensation in respect of the similarly placed persons under same acquisition, there would be no need for fresh adjudication of such claim. This application of award presupposes that the claim decided in respect of the other person has attained finality. In the instant case, admittedly, the Acquiring Body has preferred an Appeal and the said Appeal is still pending. The question arises as to whether during the pendency of such Appeal, it can be said that the judgment and award passed by the Reference Court has attained finality so as to apply the same to the Petitioner

by invoking provisions of Section 28A of the Act. In this regard, fruitful reference can be made to the judgment of the Hon'ble Apex Court in case of Babua Ram and others vs. Sate of U.P. and another, **(1995) 2 SCC 689**, wherein it is held that since the award of Civil Court is carried in Appeal it becomes obligatory for the Collector to keep the application for redetermination of compensation pending till decision of the appeal and to redetermine the compensation on the basis of final judgment and decree. It is, thus, clear that the order passed by the Collector postponing the proceedings under Section 28A of the Act *sine die* till the decision of the Appeal by this Court, is in accordance with the settled position of law.

7. As far as the contention of the learned Advocate for the Petitioner about there being no impediment in deciding the Application under Section 28A of the Act, in view of the fact that this Court in the pending Appeal, it is pertinent to note that an order of 'stay' is granted by this Court against execution of the said award. Such stay was conditional subject to the Appellant depositing the amount of compensation in this Court within the stipulated time. Since the amount has not been deposited therein, the order of stay to the award is vacated. This does not mean that the Appellate Court

has confirmed the award passed by the Reference Court. We are, therefore, not impressed with the said submission of the Petitioner.

8. In view of the above discussion, we do not find any substance in the Petition. Hence, **the Writ Petition is dismissed**. It is, however, open for the concerned parties to request for the expeditious disposal of the Appeal.

(R. M. JOSHI)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

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